

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL E. ANDERSON,  
Petitioner,

v.

HAROLD CLARKE,  
Respondent.

CASE NO. C04-1657JCC-MJB  
ORDER

This matter comes before the Court on Petitioner's Motion for Issuance of a Certificate of Appealability. (Dkt. No. 24.) Petitioner seeks a certificate of appealability with respect to the Court's adoption of United States Magistrate Judge Monica J. Benton's Report and Recommendation dismissing Petitioner's habeas corpus petition. Having reviewed the materials submitted by the parties and being fully informed, the Court hereby DENIES Petitioner's application for a certificate of appealability.

Final orders issued by a federal district court in habeas corpus proceedings are reviewable by the circuit courts of appeal. 28 U.S.C. § 2253(a). Prior to such appellate review, however, Petitioner must first obtain a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). When a writ of habeas corpus is denied on procedural grounds, a court may issue a COA only if Petitioner can show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

1 constitutional right and that jurists of reason would find it debatable whether the district court was  
2 correct in its procedural ruling.” Stack v. McDaniel, 529 U.S. 473, 484 (2000). In adopting Judge  
3 Benton’s Report and Recommendation, this Court dismissed Petitioner’s claims that the Washington  
4 courts violated his Fifth, Sixth, Eighth, and Fourteenth Amendment rights by improperly and inadequately  
5 reviewing “newly discovered evidence of his actual innocence concerning his 1979 conviction.” (Dkt. 15  
6 at 18.) The Court agreed with Judge Benton’s conclusion that Petitioner’s claims were procedurally  
7 barred because he failed to pursue direct or collateral review while he was in custody on the 1979  
8 conviction. Additionally, Petitioner’s belated challenges were barred by the one-year time limit  
9 prescribed by RCW 10.73.090. (R&R at 16.)

10 Petitioner submitted no additional documents with his notice of appeal. (Dkt. 24.) The Court  
11 construes this to mean that Petitioner intended to resubmit his previously articulated argument.  
12 Therefore, Petitioner neither shows additional information as to why Petitioner neither shows reason why  
13 a reasonable jurist would find it debatable whether the Court was correct in its procedural ruling, nor  
14 makes an argument as to why his constitutional claims have merit. Accordingly, Petitioner did not meet  
15 the requirements for this Court to issue a certificate of appealability.

16 For these reasons, the Court hereby DENIES Petitioner’s Application for a Certificate of  
17 Appealability.

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19 SO ORDERED this 17th day of May, 2005.

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22 UNITED STATES DISTRICT JUDGE  
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